

1. General – Scope

- (1) The Terms and Conditions of Delivery of Xenios AG shall apply exclusively. Xenios AG does not acknowledge terms and conditions of the customer which conflict with or differ from the Terms and Conditions of Delivery, unless it expressly consents that they are to apply. The Terms and Conditions of Delivery of Xenios AG shall apply even if it accepts orders by the customer without reservation in the knowledge that the customer's terms and conditions conflict with or differ from its Terms and Conditions of Delivery.
- (2) The customer also acknowledges the Terms and Conditions of Delivery as binding on all future business transactions with Xenios AG – if they can be expected in future – and waives the right to insist on its own terms and conditions of purchase, which shall not become a subject of the agreement as a result of acceptance of an order without reservation.
- (3) Any exclusion, modification and/or amendment of these Terms and Conditions of Delivery in conclusion of an agreement shall not be valid unless given in writing. There are no verbal collateral agreements.
- (4) The Terms and Conditions of Delivery shall only apply to entrepreneurs within the meaning of Section 310 (1) BGB (German Civil Code).

2. Offers, impermissible advertising

- (1) The offers of Xenios AG shall be without commitment (*freibleibend*) and will only become binding when an order has been confirmed in writing. Supplements, amendments and secondary instructions will also not be effective unless confirmed in writing.
- (2) Drawings, figures, dimensions, net and gross weight and other data become obligatory when the offer is accepted and no different declaration is made on such document.
- (3) Any information relating to qualities or service life shall constitute guarantees only if they have been expressly indicated as such. The same shall apply to assumption of a procurement risk.
- (4) The prior written consent of Xenios AG shall be required if the customer wishes to use the cooperation between the parties for reference and/or promotional purposes.

3. Delivery, passing of risk

- (1) The written order confirmation of Xenios AG shall be authoritative as regards the delivery's nature and scope. Xenios AG shall be authorised to make part deliveries if and insofar as the customer can be reasonably expected to accept them.
- (2) The delivery period shall commence when the written order confirmation is sent, but not before clarification of all the questions that are essential to execution of the agreement and connected to the actions to be undertaken by the customer. In particular, the delivery period shall not commence before Xenios AG has received all

the information required for the delivery from the customer or its representative or before the customer proves that it, if necessary, has opened a documentary credit, made a payment on account or furnished security in accordance with the agreement. In the event of deliveries to non-EU countries, the supply is the second working day after ordering, if the orders are made before 14:30 and the aforementioned conditions are met.

- (3) The delivery period shall have been adhered to if, by the time it expires, the goods to be supplied have left the works of Xenios AG or Xenios AG has notified the customer that the goods are ready for shipment and they cannot be dispatched in time through no fault of its own.
- (4) All cases of force majeure, strike, lockout, inadequate supply of materials, commodities or energy, a lack of means of transport and other similar events or causes outside the sphere of influence of Xenios AG shall exempt it from its obligation to fulfil the agreement for the duration and to the extent of such hindrances. This shall also apply if such circumstances occur at suppliers of Xenios AG. Xenios AG shall inform the customer of the start and end of such reasons for a hindrance as soon as possible. Xenios AG shall be authorised to postpone deliveries and services by the duration of the hindrance plus a reasonable ramp-up time.
- (5) In case the unforeseen circumstances according to Section 4 of this Clause 3 occur while Xenios AG is in delay, Xenios AG shall not be liable for damages that arise from the unforeseen circumstances.
- (6) In case the unforeseen circumstances take longer than 3 months, the customer, after keeping a reasonable extension of the delivery time, is entitled to cancel the contract with respect to the part of the contract not performed.
- (7) In compliance with the terms of delivery as agreed, the risk shall pass on to the customer as soon as the merchandise is turned over to the first carrier or has left the store of Xenios AG for shipment. In case the shipment is not possible through no fault of Xenios AG, the risk passes on to the customer with the announcement of the readiness of shipment.

4. Prices

- (1) Unless otherwise agreed, prices quoted in the offer are binding for 30 days as of the date of the offer. Prices stated in the confirmation of order are decisive. All the stated prices are net, i.e. do not include statutory value-added tax at the applicable rate and freight charges.
- (2) Each Letter of Credit will be charged with an appropriate fee. In case Xenios AG has to witness a document legally by a consulate, the appropriate fee will be charged.
- (3) The prices shall be valid for 12 months – even if they have not been issued in the form of price lists – and must be confirmed in writing by Xenios AG thereafter. Prices stated on orders of the customer are binding only if they have been confirmed by Xenios AG in writing.

5. Terms of payment

- (1) Invoices of Xenios AG shall be paid within 30 days of the date of the invoice. Payment day shall be the day Xenios AG can dispose of the money. Despite contrary regulations of the customer, Xenios AG shall be entitled to determine against which outstanding accounts the payment is credited.
- (2) Xenios AG shall be authorised to demand interest on arrears of 8 % pro rata on the 3-month reference of the EURIBOR rate in the case of delays in payment. It reserves the right to prove and claim further damage due to the delay.
- (3) The customer shall only have the right of retention with respect to claims of Xenios AG in case Customers claims are undisputed or have been ruled on finally and conclusively by a court of law. The customer can offset claims only if they are permissible, not in dispute and have been ruled on finally and conclusively by a court of law.
- (4) Checks and bills of exchange shall only be accepted following prior arrangement and only on account of performance, but not in lieu of performance, with all collection and discount charges being billed to the customer. Rediscounting and renewal of bills shall not constitute performance. Discounting shall also not constitute performance as long as Xenios AG is subject to recourse as the party liable on the bill.
- (5) After Xenios AG has set a reasonable period of grace and this has expired without remedy, it shall be authorised to perform outstanding deliveries only in exchange for cash in advance or make them contingent on provision of security if the customer fails to meet agreed periods for payment or there are circumstances that, by customary banking standards, raise justifiable doubts as to the customer's ability to pay. Xenios AG shall also be authorised to declare that its claims must be paid immediately, regardless of the term of any bills of exchange, and to demand security.

6. Warranty / liability

- (1) In order to assert warranty claims, the customer must have properly complied with its statutory obligations to inspect delivered goods and report defects in them. If the goods obviously have defects or the delivery is obviously not complete, the customer shall submit a written complaint to Xenios AG immediately, usually within two weeks of the delivery's arrival at the place of destination, giving a more detailed description of the fault and stating the invoice number. At the request of Xenios AG, documents, samples, packing slips and/or the defective goods shall be returned to it. The customer shall not have a right to claim that the goods are defective or the delivery is incomplete if it does not meet this obligation.
- (2) If the goods have defects, Xenios AG can rectify the goods or provide a substitute free of defects (subsequent remedy), at its discretion. The customer shall be authorised to rescind the agreement or reduce the price in accordance with the statutory provisions only if subsequent remedy repeatedly fails or is unreasonable and the defects are not merely insignificant. Section 478 BGB (German Civil Code) shall remain unaffected.
- (3) Xenios AG shall be liable without restriction pursuant to the German Product Liability Act (Produkthaftungsgesetz). Xenios AG shall be liable without restriction pursuant to the General Equal Treatment Act (AGG) in cases where it has expressly assumed a

guarantee or procurement risk and if it breaches its duties through intent or gross negligence. It shall also be liable without restriction for intent and gross negligence on the part of its executive employees and for intent and gross negligence on the part of its simple vicarious agents.

- (4) It shall also be liable without restriction in the case of injury to life, body or health . It shall be liable for damage to property or economic loss caused through slight negligence only if it violates substantial contractual obligations, i.e. obligations which are vital to proper fulfilment of the agreement and the proper fulfilment of which the customer regularly relies and may rely on, but restricted to damage which is typical of the agreement and was foreseeable at the time the agreement was concluded.
- (5) Claims for reimbursement for damage of any type resulting from normal wear and tear through use, incorrect handling, modification, assembly and/or operation of the objects supplied or incorrect advice or instruction by the customer shall be excluded, unless Xenios AG is to blame.
- (6) If the purchaser is authorised to demand damages in lieu of performance or rescind the agreement, it must declare within a reasonable period of time at the request of Xenios AG whether and how it intends to exercise these rights. If it does not give this declaration on time or insists on performance, it shall be authorised to exercise these rights only after a further reasonable period of grace has expired without remedy.
- (7) The period of limitation for warranty claims shall be 12 months as of the passage of risk. The same shall apply analogously to legal imperfections in title. The statutory periods of limitation shall apply to intentional breaches of obligations, claims due to tortuous acts, the lack of warranted qualities, assumption of procurement risks and injury to persons. Sections 438 (3), 479 and 634 a (3) BGB (German Civil Code) shall remain unaffected.
- (8) Any liability for damages above and beyond that specified in the above Subsections of this Section 6 shall be excluded, regardless of the legal nature of the claim.
- (9) The above limitations to liability shall also apply with respect to grounds and amount in favour of our statutory representatives, employees and other vicarious agents.

7. Returns

- (1) Without prejudice to the warranty claims to which the customer is entitled, Xenios AG shall only take back products in an undamaged and sellable condition and in their unopened original packaging. Products whose sell-by date has expired shall not be accepted.
- (2) Contaminated products must not be returned.

8. Reservation of ownership

- (1) Xenios AG reserves ownership to all supplied goods until the customer has settled all its current and future obligations from the business relationship with it in full. This shall also apply if payments on specially designated claims are made. If a current account

exists, the goods subject to reservation of ownership (retained goods) shall be regarded as security for the claim for the account balance.

- (2) The retained goods shall be reworked or processed for Xenios AG as the manufacturer within the meaning of Section 950 BGB (German Civil Code), without this entailing any obligation on it. The reworked/processed goods shall be regarded as retained goods within the meaning of these terms and conditions. If the retained goods are processed or inseparably mixed/combined with other objects that do not belong to Xenios AG, Xenios AG shall acquire co-ownership of the new object in the ratio of the invoice value of the retained goods to the invoice value of the other objects used at the time of processing or mixing/combination. If the retained goods are combined or inseparably mixed with other objects that do not belong to Xenios AG to create a single object and this object can be regarded as the main object, the customer hereby assigns pro-rata co-ownership of it to Xenios AG, provided the main object belongs to the customer. The customer shall hold the property created in this way in safekeeping for Xenios AG free of charge.

The co-ownership rights of Xenios AG shall be regarded as a reservation of ownership within the meaning of these Terms and Conditions of Delivery.

- (3) Subject to revocation by Xenios AG, which can be issued at any time and for no special reason, the customer shall be authorised to resell, further process or reform the retained goods in the ordinary course of business.

If the retained goods are resold, the customer hereby assigns its purchase price claims from such a sale to Xenios AG. If the retained goods are sold by the customer along with other objects not supplied by Xenios AG, said assignment shall apply only to the value of the sold retained goods as stated on the invoice of Xenios AG. If objects in which Xenios AG has co-ownership shares in accordance with Subsection (2) are resold, the assignment shall apply to the amount of said co-ownership shares. The assigned claims shall serve as security to the same extent as the retained goods.

If the assigned claim is included in a current account, the customer hereby assigns a balance from the current account equal to the amount of the said claim to Xenios AG.

Subject to revocation by Xenios AG, which can be issued at any time and for no special reason, the customer shall be authorised to collect the claim assigned to Xenios AG. Upon request of Xenios AG, the customer shall be obliged to inform its purchasers of the advance assignment to Xenios AG – unless Xenios AG does so itself – and provide Xenios AG with the information and documents it requires to assert the claim.

- (4) If the value of the existing security for Xenios AG exceeds its claims by a total of more than 10%, it shall release commensurate security at the request of the customer and at its discretion.
- (5) The customer shall not be authorised to otherwise dispose of the retained goods (by pledging them or assigning them as security) or otherwise assign the claims stated in Subsection (3). If the retained goods are pledged or seized, the customer shall point out that Xenios AG owns them and inform it immediately.

- (6) The customer shall be obliged to insure the retained goods adequately against all customary risks, in particular against the risk of fire, burglary and water damage, at its own cost, to treat them with care and to store them properly.
- (7) If the customer is in delay in payment, Xenios AG shall be authorised to take back the retained goods after setting a period of grace and expiry of it without remedy, even if it has not rescinded the agreement.

9. Right of rescission

Xenios AG shall be authorised to rescind the agreement if the customer is in delay in meeting its payment obligation and it does not meet this obligation – notwithstanding Section 323 (2) and (3) BGB (German Civil Code) – within a reasonable period of grace, its financial position deteriorates, insolvency proceedings or court composition proceedings to avert insolvency are instigated against it or out-of-court composition proceedings are conducted or objects which are supplied to customers and which are the property of Xenios AG are pledged or otherwise claimed by third parties. The customer shall report any pledges of objects supplied subject to reservation of ownership to Xenios AG immediately. If it fails to do so, it shall be obliged to reimburse the damage incurred by Xenios AG as a result.

10. Aids / confidentiality

All tools, software, samples, drawings, calculations, documents and other aids provided to the customer for the purpose of executing orders shall remain the property of Xenios AG. They shall be kept confidential, must not be reproduced, copied or used for other purposes and shall be returned to Xenios AG immediately upon request.

11. Place of performance, place of jurisdiction and applicable law

- (1) If the customer is a merchant, a juristic person under public law or a special public-law fund, the courts at the place of Xenios AG's headquarters in Heilbronn shall have legal venue and jurisdiction for all disputes on rights and obligations under this agreement, including its validity. Xenios AG can also file legal action against the customer at the latter's place of general jurisdiction. In the cases specified in Sentence 1, the headquarters of Xenios AG shall be the place of performance.
- (2) The law of the Federal Republic of Germany applicable to the legal relationships between domestic contractual partners shall apply without exception; the provisions of the United Nations Convention on the International Sale of Goods (CISG) are hereby excluded.

12. Final provision

If one or more provisions of these Terms and Conditions of Delivery are or become void or invalid in full or in part, this shall not affect the remaining provisions. The parties undertake to replace the void or invalid provision with a valid and effective stipulation that corresponds to it as closely as possible in legal and economic intent.

Xenios AG
Im Zukunftspark 1
74076 Heilbronn
Germany

Tel.: +49 7131 2706 400
Fax: +49 7131 2706 499
www.xenios-ag.com/